

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CARL W. NICKLESON,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-07-392-R
)	
OKLAHOMA COUNTY JAIL, et al.,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Petitioner, a prisoner appearing pro se has filed this action seeking a writ of habeas corpus. United States District Judge David L. Russell has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that this action be dismissed without prejudice.

By Order of this Court dated April 10, 2007, Petitioner was advised that his petition was not filed on the proper form in accordance with Local Civil Rule 9.2. Further, Petitioner was advised that it appeared to the undersigned that his action would be more properly brought as a civil rights action. Finally, the undersigned noted that Petitioner had not paid the filing fee or filed an application for leave to proceed *in forma pauperis*. The undersigned directed Petitioner to cure these deficiencies on or before April 30, 2007. A review of the Court file reveals that as of this date, Petitioner has not complied with this order, requested an extension of time within which to do so, nor demonstrated good cause for his failure to respond to the Court's order. On April 13, 2007, the Court received a letter from Mr. Nickleson advising the Court that he had "contracted a staph infection" as a result of conditions of his confinement and requesting

that an attorney be appointed to represent him. Nothing further has been received from Mr. Nickleson. Plaintiff's failure to comply with this Court's order combined with the Court's need to manage and control its caseload warrants dismissal of the complaint without prejudice to refiling. *See Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992) (noting court has repeatedly upheld dismissals in situations where the parties have neglected their cases or refused to obey court orders). Therefore, the undersigned recommends that this action be dismissed without prejudice to refiling.

RECOMMENDATION

For the reasons set forth above, it is recommended that this action be dismissed without prejudice. Petitioner is advised that any objection to this Report and Recommendation must be filed with the Clerk of this Court by the 31st day of May, 2007, in accordance with 28 U.S.C. §636 and Local Rule 72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 11th day of May, 2007.



BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE